

chapter 13

Border Issues and Colonias



Border Issues and Colonias

Program Assistance

Air Regulations - For questions on air regulations, compliance inspections, or enforcement actions, contact your Region Office Air Program Manager (refer to Chapter 1).

Border Project Coordination - For information about interagency and international border projects, call the Office of Border Affairs and Environmental Equity at 512/239-3600.

Determination of Service Area - To determine the utility service area of a water or wastewater utility, call the Utility Certification and Rate Design Section at 512/239-6960.

Dumping - To report illegal dumping or wastewater discharges, call your TNRCC Region Office.

Economically Distressed Area Program - For information about the status of this program and to discuss eligibility for funding, call the Texas Water Development Board (TWDB) at 512/463-8420.

Funding Options - To determine what federal funding options are available and how to pursue them, call the EPA Region VI Office at 214/665-7110.

Health Concerns - To report acute health concerns, call the Texas Department of Health (TDH) Border Office at 800/693-0562.

Illegal Colonia Development - To report the development of an illegal colonia, call the Attorney General's Colonias Strike Force at 512/463-2191.

Location/Status of Colonia - To determine the location or status of a colonia, call the TWDB Planning Division at 512/463-8060.

Maquiladora Waste Regulations - For questions about maquiladora waste regulations, call the Special Wastes Manager at 512/239-6832.

Septic System Discharges - To report septic system discharges, call your County Health Department, County Commissioner, or your TNRCC Region Office.

Solid Waste Compliance and Enforcement - For solid waste compliance and enforcement concerns, call your TNRCC Region Office.

Solid Waste Planning and Grants - For help with solid waste planning issues or information on Solid Waste Grants to councils of government, call the Waste Planning and Assessment Division at 512/239-6809.

Utilities - For assistance with water and wastewater utilities, call the TNRCC Utilities Assistance Section at 512/239-6105.

Water Quality - For questions regarding the quality of a drinking water supply, call the Monitoring and Enforcement Section at 512/239-6020.

State and Local Authority

State

TNRCC staff are involved with numerous aspects of municipal solid waste (MSW), water, and wastewater management in the border regions. TNRCC is responsible for the enforcement of environmental laws and regulations, and the administration of a comprehensive solid waste management planning, water, wastewater, and air programs. The regional solid waste plans are developed by the 24 regional councils of government (COGs). The agency also participates in border-related workgroups and networks to address unique border issues.

Two other state agencies manage programs affecting colonias. The TWDB administers the Economically Distressed Areas Program (EDAP) and the Texas Department of Housing and Community Affairs (TDHCA) administers the Community Development Block Grant Program.

Local

Local responsibilities along the border are the same as for other local governments statewide. However, border communities are often faced with special problems in developing and delivering water and wastewater utility and solid waste services to their customers, especially when they reside in colonias.

Local governments must conform to their regional solid waste management plans when developing local solid waste management plans. Contact your COG (refer to Appendix 3) for more information about regional plans and local government roles. If you have further questions about the authority, intent, requirements, or implementation of regional waste management plans, contact the TNRCC Solid Waste Planning Section at 512/239-6809.

If a local government operates a water or wastewater utility, it will have a Certificate of Convenience and Necessity (CCN), which defines the utility's service area(s). The utility is obligated to serve all customers in the certified

service area, including colonias residents. For more information on CCNs, refer to Chapter 12, Water Rates.

Program Requirements

Economically Distressed Areas Program (EDAP)

EDAP attempts to address some of the problems confronting and presented by colonias. This program has three main provisions.

The TWDB determines which counties are eligible for EDAP. Eligibility is based on county employment and income levels relative to the national average. EDAP counties are eligible for special State funding for water and wastewater projects, provided they adopt and comply with the Model Subdivision Rules.

The Model Subdivision Rules define existing facilities and set standards for new construction. Subdivisions must meet these standards to have their plats accepted into county records. Once the subdivision is accepted, the county (or municipal authority) issues a Certificate of Compliance with Plat Requirements as provided in the Local Government Code Chapter 232.047 (for counties) and Chapter 212.012 (for municipalities). If the subdivision's plat is not accepted, utility providers are prohibited from providing service to the subdivision.

Colonias in existence since September 1, 1989 or earlier have been "grandfathered." This provision allows "grandfathered" colonias to access State funding for water and wastewater improvements.

Enforcement

The TWDB and the Office of the Attorney General continually monitor enforcement and implementation of the Model Subdivision Rules. Counties that grant frequent variances may become ineligible for EDAP funding. For more information on the EDAP program, contact TWDB at 512/463-8420.

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In Addition

Frequently Asked Questions

Why doesn't my colonia have water or wastewater utility service?

The first thing to determine is whether the colonia is eligible for utility service. The colonia is eligible for utility service if it meets one of two conditions:

The colonia existed before September 1, 1989. TWDB or the county may have records to verify the existence of the colonia before September 1, 1989.

The colonia was accepted for platting after September 1, 1989 but water and wastewater facilities have not yet been built. In this case, the county may have granted a variance to platting requirements before adopting or fully implementing the Model Subdivision Rules. Although the colonia may be eligible for utility service, the county may not be eligible for EDAP funding because of non-compliance with the Model Subdivision Rules.

If the colonia is eligible for utility service, then it must be determined whether there is a water or wastewater provider who is obligated to serve the colonia. The answer to this question may be obtained from the TNRCC Utility Certification and Rate Design Section, the TWDB Planning Division, the local water provider, if any, or the nearest city. In some cases, potential utility providers may be in dispute over who will be granted the right to provide water or wastewater service to the colonia.

If the colonia is within the service area of a utility, the utility has an obligation to serve the eligible colonia by the terms of its CCN. See Chapter 12, Water Rates, for a more detailed explanation of CCNs. The utility should be contacted to determine the status of any plans to provide service to the colonia.

If no plans are being developed to serve the colonia, then colonia representatives should address the utility's decision-making body (the board of directors or city council) to make them aware of the need for service.

If there is no designated service provider (or CCN holder), then the residents of the colonia

may ask to be included in the service area of a nearby utility. In remote areas, innovative technologies may be considered if traditional facilities are found to be infeasible. Generally, the county engineer's office will be aware of local conditions and the possibility of obtaining funding for utility projects.

Under what circumstances is my local government required to provide MSW services?

Counties with populations of more than 30,000 and municipalities must assure that MSW services are provided to all persons in their jurisdictions by a public agency or private person.

What authority and options does my government have to conduct MSW management activities?

Chapters 363 and 364 of the THSC provide authority and establish guidelines for public agencies to address their specific MSW management problems. The purpose of Chapter 364 "is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state". This authority may help local governments to address collection service issues in colonias and other unincorporated areas.

How are my local government MSW management activities affected by existing MSW regional plans? What legal authority do regional or local solid waste management plans have? What value are they to my local government?

Regional planning authorities or COGs are responsible for coordinating the implementation of regional policies and the recommended actions in an approved regional plan and for coordinating local planning efforts. Local governments should implement the policies and recommended actions of an adopted regional plan and must maintain policies and activities that do not conflict with provisions in state and regional plans.

An approved solid waste regional plan can be a useful risk-reduction and cost-saving tool for local governments. The plans provide valuable background information, identify problems and potential solutions, assess alternatives, and

provide a policy blueprint for long-term solutions to regional MSW problems. Local governments should find that these documents will save valuable staff or consultant costs when making local MSW management decisions, may generate considerable savings through cooperative solutions to common problems, and assist with future planning. Some funding sources also consider regional plan recommendations when awarding grants to local governments.

Other Assistance

Federal Programs

Environmental Protection Agency (EPA)

The EPA funds wastewater loan and grant programs, planning projects, and the Plumbing Loan Program. These federal programs are administered in Texas by TWDB.

To be eligible for any of these programs, you must be a political subdivision or water supply corporation, apply the funds to the development of a wastewater collection facility, and be a colonia within 100 miles of the border. For information, contact EPA Region VI at 214/665-7110.

Rural Economic and Community Development Service

Formerly Farmer's Home Administration, this program administers loans and grants to rural utilities and small cities for water and wastewater line extensions to colonias. This service also administers grants to individuals for the cost of taps and plumbing fixtures, and low-income, single-family housing.

These community grants and loans must be used for water and/or wastewater disposal systems in communities classified as low-income or facing significant health risks. The applicant must be a political subdivision or WSC, and serve a rural or incorporated area with a population of less than 10,000.

This program also offers individual grants for water and wastewater service hook-ups. To qualify, an applicant must be a U.S. citizen or permanent resident and own a home. The contact for this grant is the Chief of Community Programs, Temple, TX 817/774-1306.

State Programs

Office of the Attorney General (AG)

Through the Colonias Strike Force, the AG prosecutes developers who subdivide and sell land in violation of the Model Subdivision Rules. The AG works with county and other local governments to assure compliance with these rules. The AG coordinates with other state agencies when determining settlement terms, which frequently include remedial actions to maximize benefits to colonia residents. For more information, contact the Colonias Strike Force at 512/463-2025.

Texas Water Development Board (TWDB)

In addition to EDAP, TWDB also offers loans to individuals for plumbing fixtures and taps, and administers a program designed to assist remote areas with regional planning. Contact the TWDB Planning Division at 512/463-8060 for more information.

Texas Department of Housing and Community Affairs (TDHCA)

The TDHCA administers the Community Development Block Grant program to fund public facilities, economic development, housing assistance and planning projects.

The TDHCA also administers the Mortgage Revenue Bond Program to convert existing land contracts for deeds held by colonias developers to mortgages, and operates "one-stop" service centers along the border to assist colonias' residents and service agencies in accessing available resources.

To qualify for a grant, the applicant must be a county or non-entitlement city (county or city may administer a program for other non-profit entities). The funds must be used for water and/or wastewater, drainage and housing facilities, or for planning and subdivision platting. Colonias must be within 150 miles of the border. For more information on this Program, contact the TDHCA at 512/475-3882.

Texas Department of Health (TDH)

The TDH administers various public health programs and low-income health care programs for colonias residents. For more information on TDH programs, call 800/693-6699.

Texas Natural Resource Conservation Commission (TNRCC)

The Water Utilities Division has contracts with two organizations to provide managerial and technical assistance to water and wastewater utilities and communities. The Texas Rural Water Association (TRWA) provides circuit riders for one-on-one technical and business assistance in the field. The other contractor, Community Resource Group (CRG), helps small communities, homeowner groups, and other small utilities in providing water or wastewater service. The primary focus is planning and managing water and wastewater utility service at the local levels. Both contractors have representatives in border counties and are able to assist local utilities plan and manage service extensions to colonias. For information on these programs, contact Water Utilities Assistance at 512/239-6105.

STEP (“Small Towns Environmental Program”) fosters community action and involvement by providing guidance and loans to small towns. For more information, contact the Consumer and Utility Assistance Division at 512/239-6120.

The TNRCC Waste Planning and Assessment Division administers a municipal solid waste (MSW) grant program through the COGs and other local entities to assist regional and local governments with solid waste problems. For information on your COG MSW coordination contact, refer to Appendix 3.

The Border Pollution Prevention Program is part of TNRCC’s comprehensive border strategy. The program sponsors pollution prevention training and technical assistance projects along the Texas/Mexico border with the cooperation and funding from the EPA. For more information, call 512/239-3100.

Significant Laws

The following is a brief summary of the State laws relating to Border issues and colonias. Please refer to the official rules for specific questions regarding compliance and applicability. The TNRCC publication “Regulatory Resource” (GI-32) contains detailed information about obtaining copies of the Agency’s rules (see Appendix 4). The TNRCC Rules are also accessible from the Agency bulletin board. Refer to OnLine Services in Chapter 2 for more details.

State Laws

*Texas Water Code (TWC) Chapter 15
Subchapter S*

TWC Chapter 13.2501

Authorizes the prohibition of utility service.

TWC Chapter 16 Subchapter J

Defines EDAP eligibility.

TWC Chapter 17 Subchapter K

Defines EDAP financial assistance.

Texas Local Government Code Chapter 212.012

Outlines conditions for acceptance of a plat by a municipal authority (for counties, the appropriate section is Chapter 232.047).

*County Solid Waste Disposal Act,
THSC Chapter 364*

Enables counties to develop and implement solid waste management plans and regulations.